

ENG BCA No. PCC-195
DILLON CONSTRUCTION, INC.

Contracting Officer's Failure to Decide - Request for Board to Direct Issuance of Decision--The Board directed the Contracting Officer (CO) to issue an appealable decision or explain the failure to do so where four months after a small claim was filed, the CO had not yet issued an appealable decision but had written a letter to the contractor stating that the CO "did not consider that [the contractor] had suffered any impact."

Representation before the Board--The Board docketed an appeal and concurrently directed that the Appellant clarify the status of its representation before the Board where it was not clear that the Appellant's representative was an officer of the corporate Appellant or an attorney.

Board Jurisdiction--The Board had jurisdiction to docket an appeal and determine its own jurisdiction while directing the CO to issue an appealable decision and while clarifying the status of the Appellant's representation before the Board.

THE CORPS OF ENGINEERS BOARD OF CONTRACT APPEALS

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| Appeal of |) | |
| |) | |
| DILLON CONSTRUCTION, INC. |) | ENG BCA No. PCC-195 |
| |) | |
| Contract No. CC-3-473 |) | |

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| Appearance for the Appellant: | Mark W. Dillon Dillon Construction, Inc. Panama, Republic of Panama |
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| Appearance for the Respondent: | Theodore G. Lucas, Esq. Office of the General Counsel Panama Canal Commission Balboa, Republic of Panama |
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ORDER DOCKETING APPEAL AND DIRECTING ISSUANCE OF CONTRACTING OFFICER DECISION

By letter dated January 15, 1999, received by the Board on January 27, the Appellant, Dillon Construction, Inc. (DCI) requests that the Board issue an order directing the Contracting Officer (CO) to issue a CO's decision (COD) on a claim. No specific time for issuance of such a decision is suggested by DCI. The letter is signed for DCI by Mark W. Dillon. Mr. Dillon's position with or authority to act for the corporation is not shown.

DCI asserts that it filed a claim for a suspension of work seeking a contract adjustment of \$45,111.72. DCI alleges that the claim letter from DCI to the Panama Canal Commission (PCC), an agency of the United States, was dated September 9, 1998. A copy of the alleged claim letter was not filed with the Board. For the purposes of this Order, the Board will presume that the letter was submitted on or about September 9.

DCI states that the PCC CO has not yet issued an appealable decision, although the CO did respond by letter dated January 8, 1999. DCI contends that the CO's letter advised that the CO "did not consider that [DCI] had suffered any impact." However, DCI also submits that the letter was not an appealable COD because it did not purport to be a COD and did not include the appeal rights language required by FAR 33.211. DCI did not file a copy of the CO's letter.

Docketing

The Board has inherent authority to docket a matter to decide its own jurisdiction and the Board has a liberal policy of docketing matters submitted to it pending clarification of its authority. Therefore, the Board hereby docket the appeal subject to the following.

Representation of DCI

Based on the name of the business, DCI appears to be a corporation. It is unclear under what jurisdiction, the Republic of Panama or other, DCI exists as a corporation.

Mr. Dillon's authority to appear before the Board for DCI is also unclear. DCI's letter dated January 15, 1999, does not assert that Mr. Dillon is an officer of the corporation. Board Rule 26 requires that a corporation appear before the Board by one of its officers or by an attorney at law duly licensed in any state, commonwealth, territory, or the District of Columbia of the United States or in a foreign country. (A copy of Board Rules is attached for DCI, only).

DCI is hereby directed, as soon as practicable, but not later than March 19, 1999, to submit the following:

- a. a copy of DCI's claim letter to the PCC dated September 9, 1998;
- b. a copy of the CO's letter to DCI dated January 8, 1999;
- c. a certificate that shows the form and origin of DCI's business (refer, for example, to the certificate set out at FAR 52.214-2); and
- d. evidence that Mr. Dillon is an officer of the corporation or is an attorney at law as defined by Board Rule 26.

Contracting Officer Decision

The PCC CO, pursuant to 41 U.S.C. § 605(c)(4) and Board Rule 1(e), will, as soon as practicable but not later than April 19, 1999:

- a. issue a COD; or
- b. provide the Board a copy of an agreement signed by both parties that settles DCI's claim; or

- c. inform the Board in writing of the reasons for failure to do one of the above.

Date: February 19, 1999

STEVEN L. REED
Administrative Judge

I concur.

I concur.

REBA PAGE
Administrative Judge
Chairman

EDWARD G. KETCHEN
Administrative Judge

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I certify that the foregoing is a true copy of the Corps of Engineers Board of Contract Appeals Order Docketing Appeal and Directing Issuance of Contracting Officer Decision in ENG BCA No. PCC-195, Appeal of Dillon Construction, Inc. Under Contract No. CC-3-473.

Date: February 19, 1999

MARYELLEN D. SIMPSON
Recorder